



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

sixteenth are carefully considered. Then Napoleon's great and unusual blunder in assuming an eastward retreat for the Prussians and acting upon the assumption without verifying it, is properly characterized. The share wrought by the muddy roads and the rains is not forgotten, nor the physical weaknesses which hampered the great general and allowed him now and then to be caught napping for a moment; the masterly position taken by Wellington; the effects of the topography; the extent to which the Emperor's attention was diverted early in the afternoon in the direction of Planchenoit, — not one of these points is forgotten or slurred over. It is this minute quantitative consideration of details that impresses upon Ropes' historical writings their truly scientific character, and no theme could have been better calculated to exhibit it in its perfection than the campaign of Waterloo. One cannot read the book carefully without feeling that for once in the world something has been done so exhaustively that it will not need to be done again. It would seem almost impossible for the most fertile mind to offer a suggestion of anything actual, probable, or possible about Waterloo that our author has not already brought forward and considered. Those who write such books are few, and to study them is a great and profitable stimulus. As this monograph on Waterloo related to a subject already well understood in Europe, it immediately gave Ropes a high reputation in European circles, and I believe he is regarded by experts as one of the soundest military critics since the days of Jomini.

JOHN FISKE.

JOHN LOWELL

JOHN LOWELL, the fourth of that name in direct descent from the first minister of Newburyport, who died in 1767, was born in Boston on the 18th of October, 1824. He was elected, in October, 1877, a Fellow of this Academy, of which his great-grandfather had been one of the original incorporators in 1780, and both his father and grandfather Fellows.

At the time of his birth his father was living on the lower (southerly) corner of what are now Bedford and Chauncy streets; but at that time, between Bedford and Summer streets, at the points where Chauncy Street now turns off, there was on Summer Street a place called Chauncy Place, running about two-thirds of the way through, and then closed by a brick wall with two openings for foot passengers, but none for vehicles, and turning up from Bedford Street a similar place called Bedford Place, on the upper side of which and next to the wall stood the house of Judge Charles Jackson, having a large garden and pear

orchard extending down the place until it touched the garden of Judge Prescott, which stretched from there up Bedford Street towards Washington. The lower side of Bedford Place was occupied by a row of brick houses, and in the one at the corner, as has already been said, John Lowell was born.

In Chauncy Place, next to the dividing wall between that and Bedford Place, stood the Chauncy Hall School, then under the management of a well-known teacher, Gideon F. Thayer. To this school, partly perhaps from its nearness as well as for its reputation, Judge Lowell was sent, as soon as he was old enough to go to any man's school. He was fitted for college in the private school of Daniel G. Ingraham, who kept for more than twenty years the leading private classical school in Boston, and graduated at Harvard in 1843 at the age of eighteen years, with high distinction in Greek, Latin, Philosophy, and History, — indeed it would seem that he must have been recognized as especially proficient in Greek, as at the Sophomore Exhibition in October, 1841, he was one of the speakers in A Greek Dialogue, "Extract from Shakspeare's Henry the Fourth: Glendower and Hotspur;" and at the corresponding Exhibition in his Junior year, had a Greek oration, "*Βύρων ἐν Ἑλλάδι.*" He was among the first scholars in his class: of his Commencement part, an English oration, the Rev. Dr. John Pierce wrote in his diary: "The subject of this oration was 'The Battle of the Nile,' — eight minutes in length, a summary of the principal facts."*

After leaving college Lowell entered the Dane Law School, and remained there for the full course of two years. He was then for a year in the office of Mr. Charles G. Loring, and was admitted to the bar in 1846. Directly afterwards he went to Europe with his father and family, and was absent about a year. On his return he formed a connection with his brother-in-law, Mr. William Sohier, and began the practice of the law. This connection lasted until 1857, when he took an office by himself.

The business in Mr. Sohier's office was mostly chamber practice, and largely connected with the management of trust estates, and Mr. Lowell's work there was not such as to give him the opportunity for any especial display of ability, or to attract any one's attention. His name, I think, appears only twice in the Massachusetts Reports for this period. In the autumn of 1857 he separated from Mr. Sohier almost at the moment when the financial difficulties of that time were reaching their

* Mass. Hist. Soc. Proceedings, Series II., V. p. 237.

crisis. These difficulties affected very seriously the manufacturing interests of this part of the Commonwealth, and many of the large mercantile firms who had been the agents of the factories. The family and business connections of Mr. Lowell and his father naturally caused him to be consulted in some of these matters, and he thus became interested in the consideration of questions arising in bankruptcy and insolvency, a branch of the law in which as a judge he subsequently acquired a well-deserved and widespread reputation.

He continued in the practice of the law until 1865. During part of this time he had charge of the "Law Reporter," a monthly journal then published in Boston. From May, 1856, he was for two years its sole editor, and afterwards until April, 1860, joint editor with Mr. Samuel M. Quincy of the Boston bar. Four volumes (Vols. 19, 20, 21, and 22) were published while he was editor.

Upon the resignation of Judge Sprague of the United States District Court of Massachusetts, in March, 1865, Mr. Lowell was appointed his successor. The appointment was wholly unsolicited by Mr. Lowell. It was made upon the recommendation of a few of the leaders of the Suffolk bar. The letter which they addressed to the President was written by Mr. Charles G. Loring, and was signed by himself, Mr. Charles B. Goodrich, Mr. Sidney Bartlett, Judge Josiah G. Abbott, Mr. Samuel E. Sewall, Mr. Edward D. Sohler, Mr. George Bemis, and Mr. Dwight Foster. It was carried to Washington at the same time with Judge Sprague's resignation by Mr. Richard H. Dana, Jr., who was then the United States attorney here. The nomination was suggested to Mr. Lincoln by Mr. Sumner and Mr. Dana, and was made and confirmed on the same day.

The appointment was one peculiarly gratifying to Mr. Lowell, for his great-grandfather, Judge John Lowell, had been appointed in 1789 by General Washington to this same office, and was the first District Judge of the United States for the District of Massachusetts, and Mr. Lowell felt a natural and proper pride and pleasure in succeeding to the honorable position and duties of his ancestor. In 1878, on the death of the Honorable George F. Shepley, Judge of the Circuit Court of the United States for the First Circuit, he was made Circuit Judge, thus again succeeding his great-grandfather, who had been appointed by President John Adams to a similar position in the court which the Federalists created in the last year of President Adams's administration, only to have the act creating it repealed and the court destroyed by the Democrats under Jefferson, as the simplest mode of getting rid of the Federalist judges whom Adams had appointed.

In May, 1884, a little more than nineteen years after his first appointment to the bench, Judge Lowell resigned his position as Circuit Judge, and resumed the practice of the law in Boston. His long period of judicial service had given the public ample opportunity to recognize his legal ability and wisdom, and from the time he returned to the bar until his last short illness, he was fully occupied with professional work. He served as arbitrator, or sat as a commissioner or special master in many causes and matters of importance; he was retained as counsel in litigations involving large interests and difficult questions, and his advice was constantly sought in solving the perplexities that arise in the administration of the law of bankruptcy. Fortunately for him this professional work was interesting and stimulating and sufficiently engrossing to distract his mind from domestic griefs and anxieties, which weighed upon him heavily at intervals.

During these years he two or three times visited Europe in the summer with his family, before a severe accident to his wife rendered it difficult for her to travel.

He married, in 1853, Lucy Buckminster, the only daughter of Mr. George B. Emerson and of Olivia Buckminster, his wife, daughter of the Rev. Joseph Buckminster of Portsmouth, N. H., and sister of the Rev. Joseph Stevens Buckminster of Brattle Square Church, Boston. For some time after his marriage Judge Lowell lived at No. 11 Chestnut Street, in the house in which his wife was born, but in 1858 he purchased a farm lying between Chestnut Hill and Hammond's Pond, where he lived until his death on the 14th of May, 1897. He had inherited a taste for country life and an interest in trees and plants, shrubs and flowers, from which he derived during these years great enjoyment; and the time which he passed in going about his place, in looking at the improvements he had made, and considering those which he proposed to make, undoubtedly contributed to the preservation of his health and the prolongation of his life. He was not a man of remarkable physique, yet until his last illness it is doubtful whether he was ever detained from his office for two days at a time by any physical ailment.

In addition to the labors of his profession, he filled during these latter years many positions of importance and responsibility. In 1896 he was appointed by Governor Wolcott chairman of the commission to revise the laws of Massachusetts on the subject of taxation, and held this office at the time of his death. He was also Vice-President of the Massachusetts General Hospital, of which he had been for many years one of the Trustees; was President of the Trustees of the Peabody Fund, an Overseer

of Harvard University, and a Member of the Massachusetts Historical Society. He received the degree of Doctor of Laws from Williams College in 1870, and from Harvard in 1871.

Before his appointment as District Judge, Mr. Lowell's work at the bar had been chiefly office practice. His clients, if not very numerous, were warmly attached to him, were continually demanding his counsel, and had the most implicit confidence in the opinions he gave them. When consulted by any one of them he rarely looked at a book; but after hearing what the client had to say, would sit perfectly quiet, until he had sufficiently considered the question, and then advise him in a way showing intuitive sagacity and familiarity both with the fundamental principles of the law and their application by the courts. He was always a diligent student, reading carefully, digesting slowly, and assimilating thoroughly what was new or seemed to him important in the volumes of reports that from time to time appeared, so that when his judicial work began he was well equipped for the duties that devolved upon him.

The District Court of the United States, of which he was at first appointed Judge, is a court of limited and peculiar jurisdiction; it has the exclusive cognizance of admiralty and maritime cases, and of all crimes committed upon the high seas; it is also a prize court, and sits as a criminal court, for the trial of offences against the laws of the United States, such as violations of the post-office laws, revenue laws, etc. The number of jury trials in this court is, however, very limited and mostly confined to criminal cases, usually of great simplicity. Judge Lowell's want of experience in practice before a jury, and in dealing with juries, was for this reason a source of much less embarrassment to him in this court than it would have been in most others. He had, in fact, before his appointment tried only one jury case, and was perfectly aware of the difficulties under which he labored in public speaking. Time and constant practice diminished these difficulties, and made it more easy for him to preside at jury trials, as he gradually overcame the obstacles which sprang largely from his want of training and experience, and a lack of confidence in himself. The civil war was not over when he was appointed to the bench, and the effect of the destruction of our merchant marine by the guns of the Confederate cruisers, and of the transfer of our ships to foreign owners, now so evident in many other ways besides that of the sadly diminished number and importance of the suits in Admiralty, had not then made themselves thoroughly felt. At the time of his appointment there were many causes pending which Judge Sprague's long illness had prevented his hearing, and Judge Lowell had at first no lack of

Admiralty suits of all kinds, including some difficult questions in prize causes. The principles and practice of the Admiralty Courts were especially congenial to him. He was in full sympathy with the tenderness which that court has always shown for the ignorant and improvident sailor ; and the cardinal rule of the Admiralty that no error of statement, or technical defect, or mistake in the kind of relief asked for, should interfere with or prevent such a decision of a cause as would work substantial justice between the parties, was in entire harmony with his view as to what should be the aim of all courts and judges so far as the established rules of law and the decided cases would permit, — an opinion which he held so strongly, that for his efforts to attain this end, he was at times called “wayward” in his decisions.

At the time of Judge Lowell’s appointment, there was no national bankrupt act in force, although there was an insolvent act in Massachusetts with which and its operation he was very familiar ; two years after he became the judge of the District Court, Congress passed the National Bankrupt Act of 1867, in the administration of which he won a distinction which placed him among the foremost, — it is perhaps not too much to say, at the head of the judges in this country, having original jurisdiction of cases in Bankruptcy and charged with the administration of this law.

As has already been said, the subject of Bankruptcy had interested him many years before his appointment to the bench ; he had begun the preparation of the treatise on this branch of the law which since his death has been published by his son, and the work he had done on this book had made him unusually familiar with the underlying principles of the Bankrupt Laws and the adjudicated cases. The purposes of a bankrupt act, — to secure the equitable distribution of an insolvent debtor’s assets among his creditors, to grant him his discharge from his antecedent liabilities if he has honestly surrendered his property to be distributed for the payment of his debts, — and, on the other hand, to prevent such a debtor, who has fraudulently concealed for his own advantage a part of his estate, or unfairly preferred some of his creditors, from receiving the benefit of the act, — these purposes equitable in both aspects, and the simplicity and directness of the methods of procedure under the practice in Bankruptcy, were all in harmony with his convictions of the useful and beneficent purposes of the law and the courts of justice, and made the administration of this law a congenial task, which he discharged not merely to the satisfaction of the bar, but to the approval of the mercantile class of the community whose interests are most affected by this law, who

are perfectly able to understand it and to judge whether it is wisely administered, and in the spirit of justice and fair dealing upon which it is founded. Upon Judge Lowell's retirement from the bench in May, 1884, the merchants of Boston invited him to a public dinner, that they might have an opportunity of testifying their high esteem and affectionate consideration for him as an administrator of the laws which most nearly concerned them in their business relations, whose decisions and interpretations of these laws had received the approval of the mercantile community throughout the land. This unusual tribute, coming from the source from which it emanated, was most gratifying to Judge Lowell as a proof that his administration of the Bankrupt Law had not only been in accord with the strong common sense of the business men of the community, but also with the principles of justice and equity which it has been the aim of every well-intended law of Bankruptcy to carry out. The mercantile community still further showed its appreciation of him by requesting him at a later date to prepare a new Bankrupt Act to be laid before Congress. But this act was unfortunately not passed.

The jurisdiction of the Circuit Court of the United States for the First Circuit, of which Judge Lowell was appointed Judge in 1878, includes the States of Maine, New Hampshire, and Rhode Island, as well as Massachusetts, and his duties as Circuit Judge brought him in contact with the members of the bar and the people of all these States; that he discharged these duties to their satisfaction was shown by the attendance of lawyers from every State in the circuit, at the bar meeting in Boston after his death, and by the abundant testimony they gave of their recognition and thorough appreciation of his worth and ability, both as a magistrate and a man. The business of the Circuit Court and the class of cases tried there is quite different from that of a District Court. It has no original jurisdiction in Bankruptcy or Admiralty, but in these matters sits only as a Court of Appeals. It deals more largely with cases at common law and with civil suits for violation of the revenue law. It has also jurisdiction of patent causes, a branch of the law which is thought to require some special aptitude for and knowledge of mechanics as well as of the physical sciences. Neither Judge Lowell's professional work at the bar nor on the bench had ever brought him to the study of this branch of the law, and he was at the outset and continued to be unduly distrustful of his ability to master and properly decide the patent cases that were brought before him. As he occasionally jocosely expressed it, "he was afraid of only one thing in the law, — those infernal machines." But he applied himself with the conscientiousness and thoroughness that

distinguished all his work to the study and investigation of these cases, and by the common consent of the counsel practising in patent cases, proved himself an excellent patent judge.

His judicial opinions are marked by clearness of thought, and the direct, terse, and vigorous expression of it, with no digressions, no discussions or dicta not absolutely necessary to the determination of the precise points before him. In deciding a cause he took the line of least resistance; if it were a short cut he availed himself of it, and this not so much because this course saved him labor, as because he intended his judgment to be confined to the determination of the case actually before him. He was careful, therefore, not to stray from the real questions at issue, and to avoid being beguiled into by-paths of interesting legal investigation which had but little or no tendency to enlighten or aid him in arriving at his conclusions, and were not important in determining his final results.

He had a natural aptitude for the law, one might almost say a legal instinct, and this was strengthened and quickened by thought and study; he possessed as a judge a remarkable intuition "for perceiving on which side lay the justice of any case and an equally remarkable ingenuity in showing that a decision in favor of that side was in accordance with the settled rules of law." When he found himself obliged to yield to precedents which prevented what justice seemed to him to require, he did so with a reluctance which he never tried to conceal and sometimes openly expressed. His quiet humor not infrequently enlivened the trial of a cause, and occasionally appeared in his Opinions, as when in denying a motion to set aside a verdict because one juror had been asleep during part of the trial, he said: "If one of the jurors was asleep, the defendant should have called attention to the fact at the time. There is no suggestion that it is newly discovered, and I cannot now say that the defendant may not have thought his interests were promoted by the actual course of the trial in this respect." Or, to quote one more instance, — in a suit where a ship owner contended that the master had forfeited his wages by taking on board some casks of Madeira wine, the ship articles prohibiting him from carrying *distilled spirits* under penalty of forfeiting his pay, Judge Lowell demolished the elaborate argument of the counsel for the ship owner by saying, "Wine is not distilled spirits, and cannot be made so by a usage of the port of New Bedford or any other process that I am acquainted with, except distillation."

Any attempt to characterize Judge Lowell's judicial qualities would be imperfect if it failed to recognize and call attention to the fact that

he had not merely the respect, but the warm affection of the members of the bar. His simple and unassuming manner claimed nothing, yet no one ever thought of treating him with discourtesy. His natural kindness led him to treat the youngest members of the bar and to listen to their arguments, however crudely presented, with a never-failing patience and consideration; and both on and off the bench, he was always, in his relations with them, cordial, friendly, and ready to give them the benefit of his wisdom and learning in any difficulty in which they might ask his advice, doing this in such a manner that he rather seemed to be receiving than conferring a favor. He was not merely a learned lawyer; he was also a lover of books, a great reader, catholic in his tastes, and spending in his library many of his hours of rest and recreation. In private life he was an agreeable companion, a loyal friend, a most devoted husband and father. He was not a demonstrative person, but "a quiet, self-contained, thoughtful, courageous, affectionate man, who kept his eye single for the right and the true, who did every duty with keen thoroughness, and who found his greatest pleasure in the companionship of those nearest and dearest to him."

THORNTON K. LOTHROP.

Other notices are postponed.

The number of new members elected during the year is as follows: Resident Fellows, 4; Associate Fellows, 5; Foreign Honorary Members, 4.

The roll of the Academy at present includes 194 Resident Fellows, 89 Associate Fellows, and 66 Foreign Honorary Members.*

* By transfer of an Associate Fellow to Resident Fellowship, and by election of new members at the annual meeting, the roll stands at date of publication 198 Resident Fellows, 93 Associate Fellows, and 69 Foreign Honorary Members.